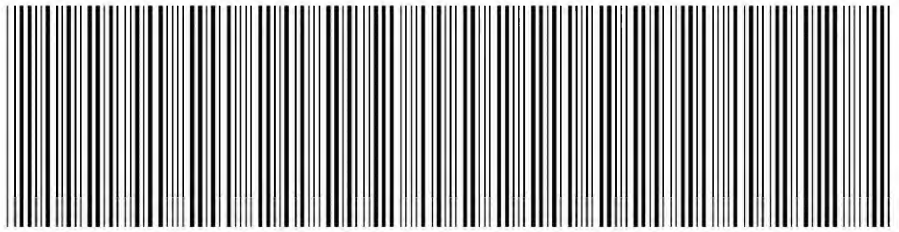


**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 54**

**Document ID: 2016050901390005**

Document Date: 05-05-2016

Preparation Date: 05-10-2016

Document Type: MORTGAGE

Document Page Count: 52

**PRESENTER:**

KENSINGTON VANGUARD  
39 WEST 37TH ST TITLE NO. 822971(S-NY-CP-EM) A  
HOLD/ PICKUP SEARCH NY  
NEW YORK, NY 10018  
212-532-8686  
chrisc@KVNATIONAL.COM

**RETURN TO:**

WELLS FARGO BANK, N.A.  
150 EAST 42ND STREET, 36TH FLOOR  
ATTENTION: MONIQUE MUTHARIKA/ MAC J0161-361  
NEW YORK, NY 10017

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
QUEENS	15842	1	Entire Lot	N/A ROCKAWAY BEACH BLVD

**Property Type:** COMMERCIAL REAL ESTATE

Borough	Block	Lot	Unit	Address
QUEENS	15843	1	Entire Lot	51-15 ROCKAWAY BEACH BLVD

**Property Type:** COMMERCIAL REAL ESTATE

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or DocumentID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**MORTGAGOR/BORROWER:**

PENINSULA ROCKAWAY LIMITED PARTNERSHIP  
C/O THE ARKER COMPANIES, 15 VERBENA AVENUE,  
SUITE 100  
FLORAL PARK, NY 11001

**MORTGAGEE/LENDER:**

WELLS FARGO BANK, N.A.  
150 EAST 42ND STREET, 36TH FLOOR  
NEW YORK, NY 10017

☒ Additional Parties Listed on Continuation Page

**FEES AND TAXES**

**Mortgage :**

Mortgage Amount:	\$	14,200,000.00
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Taxable Mortgage Amount:	\$	0.00
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Exemption:		253
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TAXES: County (Basic):	\$	0.00
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City (Additional):	\$	0.00
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Spec (Additional):	\$	0.00
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TASF:	\$	0.00
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MTA:	\$	0.00
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NYCTA:	\$	0.00
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Additional MRT:	\$	0.00
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<b>TOTAL:</b>	\$	0.00
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Recording Fee:	\$	299.00
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Affidavit Fee:	\$	8.00
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**Filing Fee:**

\$	0.00
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**NYC Real Property Transfer Tax:**

\$	0.00
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**NYS Real Estate Transfer Tax:**

\$	0.00
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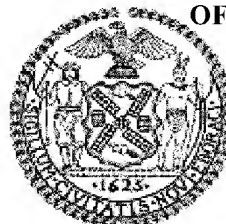
**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE**

**CITY OF NEW YORK**

Recorded/Filed 05-19-2016 12:08

City Register File No.(CRFN):

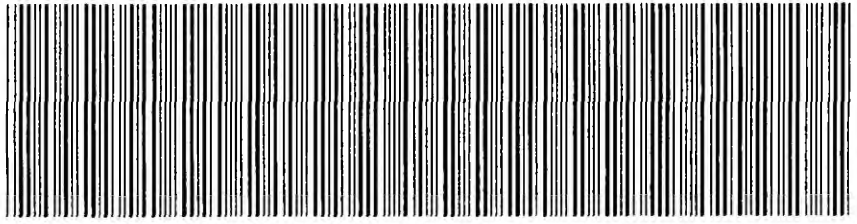
2016000172287



*Annette M. Hill*

**City Register Official Signature**

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**



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**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)**

**PAGE 2 OF 54**

**Document ID: 2016050901390005**

**Document Date: 05-05-2016**

**Preparation Date: 05-10-2016**

**Document Type: MORTGAGE**

**PARTIES**

**MORTGAGOR/BORROWER:**

PENINSULA ROCKAWAY HOUSING DEVELOPMENT  
FUND CORP.  
C/O NORTHEAST BROOKLYN HOUSING  
DEVELOPMENT CORP., 132 RALPH AVENUE

LOAN NO. 1015687

822971

31 West 52<sup>nd</sup> Street  
 New York, New York 10019  
 Attention: Kathleen M. Furey, Esq.

(Space Above For Recorder's Use)

**LAND ACQUISITION LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
 AND SECURITY AGREEMENT**

<b>NAME AND ADDRESS OF MORTGAGOR:</b>	<b>PENINSULA ROCKAWAY LIMITED PARTNERSHIP</b> c/o The Arker Companies 15 Verbena Avenue, Suite 100 Floral Park, New York 11001  and  <b>PENINSULA ROCKAWAY HOUSING DEVELOPMENT FUND CORP.</b> c/o Northeast Brooklyn Housing Development Corporation 132 Ralph Avenue Brooklyn, New York 11233	
<b>NAME AND ADDRESS OF LENDER:</b>	<b>WELLS FARGO BANK, N.A.</b> 150 East 42 <sup>nd</sup> Street, 36 <sup>th</sup> Floor New York, NY 10017	
<b>PROPERTY ADDRESS:</b>	51-15 Beach Channel Drive Far Rockaway, Queens, New York 11691	
<b>MORTGAGE AMOUNT:</b>	\$14,200,000	
<b>BLOCKS:</b>	15842	15843
<b>LOT:</b>	1	1

**LAND ACQUISITION LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT**

THIS LAND ACQUISITION LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Mortgage") made as of May 5, 2016, is granted by PENINSULA ROCKAWAY LIMITED PARTNERSHIP, a New York limited partnership ("Borrower") and PENINSULA ROCKAWAY HOUSING DEVELOPMENT FUND CORP., a New York not-for-profit corporation (the "Nominee", and together with the Borrower, collectively, the "Mortgagor"), for the benefit of WELLS FARGO BANK, N.A., a national banking association (collectively, with its successors or assigns, "Mortgagee" or "Lender").

**RECITAL**

The Nominee is the record nominal fee owner of the legal interests in the premises described on Exhibit A hereto located thereon as nominee for the Borrower. Pursuant to a Declaration of Interest and Nominee Agreement by and between Borrower and Nominee (the "Nominee Agreement"), dated May 5, 2016, Nominee has granted to Borrower the equitable and beneficial interests in the premises described on Exhibit A hereto. The Mortgagor will acquire said premises on the same date the loan is made, in order to finance such acquisition, will borrow funds as described herein (the "Loan") from the Mortgagee.

**ARTICLE 1. GRANT**

1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Security Instrument, Mortgagor irrevocably grants, conveys, assigns and mortgages, with mortgage covenants, to Lender, its successors and assigns forever all of Mortgagor's right, title and interest in and to that real property located in the County of Queens, described on Exhibit A attached hereto and made a part hereof, together with Mortgagor's right, title and interest in and to the following to the extent now owned or hereafter acquired (all of the below being collectively referred to as the "Property"):

- (a) the Collateral (as defined herein);
- (b) all buildings and other improvements, fixtures and equipment now or hereafter located on the real property;
- (c) all streets, ways, roads, and alleys used in connection with or pertaining to such real property;
- (d) all development rights or credits, licenses and permits, air rights, water, water rights and water stock related to the real property;

Acquisition Land Loan Mortgage, Assignment of Leases and Rents and Security Agreement  
Peninsula Land Loan

(e) all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property;

(f) all appurtenances, easements, estates, tenements, hereditaments, privileges, rights and rights of way appurtenant or related thereto;

(g) all buildings and other improvements and fixtures now or hereafter located on the real property, including, but not limited to all apparatus, equipment and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property ("**Improvements**");

(h) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code of the state wherein said real property is located) in any way relating to the real property and/or the Improvements and in which the Mortgagor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Mortgagor insuring the Property and all rights and interest of the Mortgagor thereunder and all rights, claims and/or causes of action which the Mortgagor may have now or may have in the future against any party or parties with respect to the real property and any such items;

(i) all Payments (as hereinafter defined), all leases and lettings of the Property now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including further, the right upon the happening of a Default (as hereinafter defined), to receive and collect the Payments thereunder;

(j) all real estate tax refunds;

(k) all interest or estate which Mortgagor may hereafter acquire in the property described above; and

(l) all additions and accretions thereto, and the proceeds of any of the foregoing.

The listing of specific rights or property herein shall not be interpreted as a limit of general terms.

- 1.2 **ADDRESS.** The address of the Property is: 51-15 Beach Channel Drive, Far Rockaway, Queens, New York 11691. However, neither the failure to designate an address nor any

inaccuracy in the address designated shall affect the validity or priority of the lien of this Security Instrument on the Property as described on Exhibit A.

- 1.3 **WARRANTY OF TITLE; USE OF PROPERTY**. Nominee represents and warrants that Nominee lawfully holds and possesses nominal fee simple title absolute to the Property and that Borrower holds and possesses all equitable and beneficial title to the Property without limitation on the right to convey and encumber, and that this Security Instrument is a first and prior lien on the Property subject only to those exceptions set forth in the Mortgagee's title insurance policy delivered at the closing of the Loan or otherwise approved by Lender in writing.

## ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED**. Mortgagor makes this Security Instrument for the purpose of securing the payment and performance of the following obligations (collectively "**Secured Obligations**"):
- (a) Payment to Lender of all sums at any time owing with interest thereon, according to the terms of that certain Land Acquisition Loan Promissory Note (as the same may be amended, supplemented, replaced or modified from time to time) ("**Note**"), in the principal amount of \$14,200,000.00 executed by Borrower and payable to the order of Lender; and
  - (b) Payment and performance of all covenants and obligations of Mortgagor under this Security Instrument; and
  - (c) Payment and performance of all covenants and obligations, if any, of any rider attached as an Exhibit to this Security Instrument; and
  - (d) Payment and performance of all other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when such obligation is evidenced by an instrument in writing, which recites that it is secured by this Security Instrument including any and all advances or disbursements of Lender with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property; and
  - (e) All modifications, extensions, novations and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes given to further secure the same indebtedness evidenced by the Note.

- 2.1 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations in accordance with the Loan Documents, together with all out-of-pocket costs of collecting the Secured Obligations, including attorney's fees.
- 2.2 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice of the provisions of the Note.
- 2.3 **MAXIMUM INDEBTEDNESS.** Notwithstanding anything to the contrary set forth in this Security Instrument, the maximum amount of principal indebtedness secured by this Security Instrument or which under any contingency may become secured hereby at any time hereafter is \$14,200,000.00, together with interest thereon, and all amounts expended by the Mortgagee to maintain the lien of this Security Instrument or protect any of the Property, including without limitation, all amounts in respect of insurance premiums and real estate taxes, charges and assessments, reasonable litigation expenses to prosecute or defend the rights, remedies and lien of this mortgage or title to the Property, and any costs, charges or amounts to which the Mortgagee become subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority.

### ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Mortgagor hereby absolutely and irrevocably assigns and transfers to Lender all of Mortgagor's right, title and interest in, to and under: (a) all present and future leases, subleases, licenses or occupancy agreements of the Property or any portion thereof, and all other agreements of any kind relating to the management, leasing, operation, use or occupancy of the Property or any portion thereof, whether now existing or entered into after the date hereof ("**Leases**"); and (b) the rents, revenue, income, receipts, reserves, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases ("**Payments**"). The term "Leases", as referred to herein, shall also include all subleases and other agreements for the use or occupancy of the Property, options, rights of first refusal or guarantees of and security for the tenant's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This assignment is intended to be and constitutes a present, unconditional and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

The assignments of Leases and Payments contained in this Security Instrument are intended to provide Lender with all of the rights and remedies of mortgagees pursuant to New York law as it may be amended and interpreted by the courts from time to time. However, in no event shall this reference diminish, alter, impair, or affect any other rights and remedies of Lender, including but not limited to, the appointment of a receiver, nor shall any provision in this section diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Mortgagor to Lender. Further, except for the notices required hereunder, if any, Mortgagor hereby waives any notice of default or demand for turnover of rents by Lender.

If the Property, or any part thereof, are located within the State of New York then reference is hereby made to Section 291-f of the Real Property Law of the State of New York for purposes of obtaining for the Mortgagee the benefit of said Section in connection with this Security Instrument.

- 3.2 **GRANT OF LICENSE.** Lender confers upon Mortgagor a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to that certain Section hereof entitled Application of Other Sums without notice and without taking possession of the Property; provided, however that in the event Lender determines such Default has been cured or satisfied, such license shall upon written notice from Lender to Mortgagor be reinstated. All Payments may be collected by Mortgagor, but prior to a reinstatement as described above, shall be held by Mortgagor as trustee under a constructive trust for the benefit of Lender. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases, to the extent the License has been revoked, to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation under the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.
- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep,



repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or under any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Lender, or any of its respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Lender hereunder; or (ii) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

3.4 **INTENTIONALLY OMITTED.**

3.5 **COVENANTS.**

- (a) Borrower covenants and agrees, at Borrower's sole cost and expense, to: (i) perform all of the obligations of landlord contained in the Leases and enforce by all available remedies performance by the tenants of the obligations of the tenants contained in the Leases; (ii) give Lender prompt written notice of any material default which occurs with respect to any of the Leases, whether the default be that of the tenant or of the landlord; (iii) exercise Borrower's commercially reasonable efforts to keep all portions of the Property that are currently subject to Leases; (iv) deliver to Lender fully executed, counterpart original(s) of each and every Lease and any modifications or amendments thereto if requested to do so. Borrower shall not, without Lender's prior written consent:

- (A) enter into any Leases after the date hereof;
- (B) execute any other assignment relating to any of the Leases;
- (C) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases;
- (D) terminate, materially modify or amend any of the terms of the Leases or in any manner release or discharge the tenants from any obligations thereunder;
- (E) consent to any assignment or subletting by any tenant under any Lease; or
- (F) subordinate or agree to subordinate any of the Leases to any other deed of trust, mortgage, deed to secure debt or encumbrance.

Any such attempted amendment, cancellation, modification or other action in violation of the provisions of this Section without the prior written consent of Lender shall be null and void; (v) in compliance with Section 13 of the Lien Law of the State of New York, receive the advances secured by this Mortgage and hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement and will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose. Without in any way limiting the requirement of Lender's consent hereunder, any sums received by Borrower in consideration of any termination (or the release or discharge of any tenant), modification or amendment of any Lease

shall be applied to reduce the outstanding Secured Obligations and any such sums received by Borrower shall be held in trust by Borrower for such purpose; and (vi) indemnify and hold harmless against any loss or liability, cost or expense, including, without limitation, any judgments, reasonable attorneys' fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Security Instrument and/or if the Property or any part thereof is within the State of New York by any claimant alleging a violation by the Borrower or the Mortgagee of Section 3 A of the Lien Law of the State of New York.

- (b) **FURTHER ASSURANCES.** Upon Mortgagee's request and at Mortgagor's sole cost and expense, Mortgagor shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper, as determined by Mortgagee, to carry out the purposes of this Mortgage and the other Loan Documents or to perfect and preserve any liens created by the Loan Documents.
- (c) **ASSIGNMENT.** Without the prior written consent of Mortgagee, Mortgagor shall not assign Mortgagor's interest under any of the Loan Documents, or in any monies due or to become due there under, and any assignment without such consent shall be void.
- (d) **DERIVATIVE DOCUMENTS.** If Mortgagor purchases from Mortgagee any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) in connection with the Loan, Mortgagor shall, upon receipt from Mortgagee, execute promptly all documents evidencing such transaction, including without limitation the International Swaps and Derivatives Association Master Agreement (the "**ISDA Master Agreement**"), the Schedule to the ISDA Master Agreement and the ISDA Confirmation.
- (e) **EXPENSES.** Borrower shall immediately pay or reimburse Mortgagee upon demand all reasonable costs and expenses incurred by Mortgagee (including reasonable attorneys' fees and expenses) in connection with: (a) the preparation of this Mortgage, all other Loan Documents and Other Related Documents contemplated hereby; (b) intentionally omitted; and (c) the enforcement or satisfaction by Mortgagee of any of Mortgagor's obligations under this Mortgage, the other Loan Document or the Other Related Documents. For all purposes of this Mortgage, Mortgagee's costs and expenses shall include, without limitation, all appraisal fees, cost engineering and inspection fees, reasonable legal fees and expenses, accounting fees, environmental consultant fees, auditor fees, UCC filing fees and/or UCC vendor fees, flood certification vendor fees, tax service vendor fees, and the cost to Mortgagee of any title insurance premiums, title surveys, reconveyance and notary fees. Mortgagor recognizes and agrees that formal written appraisals of the Property and any improvements thereon by a licensed independent appraiser may be required by Mortgagee's internal

procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that Mortgagee may, at its option, require inspection of the Property and improvements thereon by an independent supervising architect and/or cost engineering specialist. If any of the services described above are provided by an employee of Mortgagee, Mortgagee's costs and expenses for such services shall be calculated in accordance with Mortgagee's standard charge for such services. Mortgagor acknowledges and agrees that expenses incurred by Lender in connection with the enforcement of its rights hereunder are for the account of Mortgagor.

#### **ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING**

- 4.1 **SECURITY INTEREST.** Mortgagor hereby grants and assigns to Lender as of the Effective Date a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "**Collateral**"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts (including impound accounts, if any), accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Mortgagor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Property; all advance payments of insurance premiums made by Mortgagor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any loan agreement; all

reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof;; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Mortgagor and Lender that this Security Instrument constitutes a fixture filing filed with the real estate records of Queens County, New York, under the Uniform Commercial Code, as amended or recodified from time to time, from the state wherein the Property is located ("UCC"), and is acknowledged and agreed to be a "construction mortgage" under the UCC. For purposes of this fixture filing, the "Debtor" is the Mortgagor and the "Secured Party" is the Lender. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto. Mortgagor is the record owner of such land.

4.2 **REPRESENTATIONS AND WARRANTIES.** As a material inducement to Lender's entry into this Mortgage, Mortgagor represents and warrants to Lender as of the Effective Date and continuing thereafter that:

- (a) Authority/ Enforceability. If other than an individual, Mortgagor is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to borrow and own, improve and operate the Property as contemplated by the Loan Documents.
- (b) Binding Obligations. Mortgagor is authorized to execute, deliver and perform its obligations under the Loan Documents, and such obligations shall be valid and binding obligations of Mortgagor.
- (c) Formation and Organizational Documents. Mortgagor has delivered to Lender all of the relevant formation and organizational documents of Mortgagor, the partners, members, managers or joint venturers of Mortgagor (if any), and all guarantors of the Loan (if any) and all such formation documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Mortgagor hereby certifies that: (i) the above documents are all of the relevant formation and organizational documents of Mortgagor; (ii) they remain in full force and effect; and (iii) they have not been amended or modified since they were delivered to Lender. Mortgagor shall promptly provide Lender with copies of any future amendments or modifications of the formation or organizational documents.
- (d) No Violation. Mortgagor's execution, delivery, and performance under the Loan Documents do not: (a) require any consent or approval not heretofore obtained under any partnership agreement, operating agreement, articles of organization, articles of incorporation, bylaws or other document; (b) violate any governmental

requirement applicable to the Property or any other statute, law, regulation or ordinance or any order or ruling of any court or governmental entity; (c) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which the Mortgagor is or the Property is bound or regulated; or (d) violate any statute, law, regulation or ordinance, or any order of any court or governmental entity.

- (e) Compliance with Laws, Use. Borrower shall have obtained, all permits, licenses, exemptions, and approvals necessary to occupy, operate and market the Property during any period such activities are being conducted by the Borrower at the property, and shall maintain compliance with all governmental requirements applicable to the Property and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business. The Property is a separate legal parcel lawfully created in full compliance with all subdivision laws and ordinances, and is properly zoned for the stated use of the Property as disclosed to Lender at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and prior written consent from, Lender. Furthermore, Mortgagor shall not allow changes in the stated use of the Property from that disclosed to Lender at the time of execution hereof without prior notice to, and prior written consent from, Lender.
- (f) Litigation. Except as disclosed to Lender in writing, there are no claims, actions, suits, or proceedings pending, or to Mortgagor's knowledge, threatened against Mortgagor or affecting the Property.
- (g) Financial Condition. All financial statements and information heretofore and hereafter delivered to Lender by Borrower, including, without limitation, information relating to the financial condition of Borrower, the Property, the partners, joint venturers, managers or members of Borrower, and/or any Guarantors, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied (or other principals acceptable to Lender). Notwithstanding the foregoing, the calculation of liabilities shall NOT include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*) or other FASB standards allowing entities to elect fair value option for financial liabilities. Therefore, the amount of liabilities shall be the historical cost basis, which generally is the contractual amount owed adjusted for amortization or accretion of any premium or discount. Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.
- (h) No material adverse change. There has been no material adverse change in the financial condition of Mortgagor, any Guarantor with respect to Guarantor's

obligation set forth in Section 12.1 of the Guaranty, or any Indemnitor since the dates of the latest financial statements furnished to Lender and, except as otherwise disclosed to Lender in writing, Mortgagor has not entered into any material transaction which is not disclosed in such financial statements.

- (i) Zoning. Mortgagor has submitted prior to the date hereof, evidence satisfactory to Lender that an application has been submitted to the appropriate New York City governmental agencies and boards as required by the New York City Charter (the “**Charter**”) to approve a Uniform Land Use Review Procedure (“ULURP”) requesting that the Property be re-zoned to permit the Mortgagor’s development of multi-family housing and commercial buildings (the “**Re-zoning**”);
- (j) Accuracy. To Borrower’s knowledge, all reports, documents, instruments, information and forms of evidence delivered to Lender concerning the Loan or security for the Loan or required by the Loan Documents are, in all material respects, accurate, correct and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission.
- (k) Tax Liability. Mortgagor has filed all required federal, state, county and municipal tax returns and has paid all taxes and assessments due and payable, and Mortgagor has no knowledge of any basis for any additional payment with respect to any such taxes and assessments.
- (l) Business Loan. The Loan is a business loan transaction in the stated amount solely for the purpose of carrying on the business of Mortgagor and none of the proceeds of the Loan will be used for the personal, family or agricultural purposes of the Mortgagor.
- (m) Property Information. (a) The recitals described in this Mortgage with respect to the Property are true and correct in all material respects and (b) Mortgagor has no knowledge of any archaeological ruins, discoveries or specimens existing on the Property.
- (n) Survival of Representations and Warranties. All representations and warranties made herein shall survive the execution of this Mortgage, the making of all advances hereunder and the execution and delivery of all other documents and instruments in connection with the Loan, so long as Lender has any commitment to lend to Mortgagor hereunder and until the Loan has been paid in full.
- (o) Full Force and Effect. The Note and other Loan Documents are in full force and effect without any defense, counterclaim, right or claim of set-off; all necessary action to authorize the execution and delivery of this Mortgage has been taken.
- (p) Leases. The Property is not subject to any Leases as of the date hereof, except as set forth in Exhibit D.

- (q) Compliance with Matters of Record. Mortgagor has complied, and at all times will comply, with all requirements and restrictions of record and/or shown on the Title Policy applicable to the Property.
- (r) Commitment Fee. Prior to or simultaneously with Mortgagor's execution and delivery of this Mortgage, it shall have delivered to the Lender a commitment fee payable to the Mortgagee in connection with the Loan (the "Commitment Fee"), in the amount of Seventy One Thousand and 00/100 Dollars (\$71,000.00).
- (s) Borrower Equity. Prior to the making of the Loan, Borrower shall provide evidence satisfactory to Mortgagee that Borrower has invested in cash into the Premises and/or Project from its own funds the amount that is equal to at least \$6,200,000.00, and such funds shall remain invested in the Property for so long as all amounts due and owing under the Note and this Mortgage remain unpaid.

4.3 **COVENANTS.** Mortgagor covenants and agrees:

- (a) To execute and deliver such documents as Lender deems reasonably necessary to create, perfect and continue the security interests contemplated hereby;
- (b) Not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Lender prior written notice thereof;
- (c) To cooperate with Lender in perfecting all security interests granted herein and to use commercially reasonable efforts in obtaining such agreements from third parties as Lender deems reasonably necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder;
- (d) That Lender is authorized to file financing statements in the name of Mortgagor to perfect Lender's security interest in the Collateral;
- (e) That as an inducement to make the Loan evidenced by the Note, Lender shall have the right (but not the obligation) of first refusal to provide to Borrower construction financing (a "Construction Loan") for construction of certain improvements on the Premises, on customary terms and conditions then offered by institutional lenders with respect to similar properties in similar locations in New York. Lender shall have thirty (30) days after request by Borrower to provide to Borrower a term sheet for a Construction Loan provided that Borrower shall have no obligation to accept such terms so offered and shall not be restricted or prohibited from obtaining the Construction Loan from a third party lender;

- (f) That advances for the acquisition of the Property are to be repaid upon the earlier of (i) refinancing of the Property, (ii) sale of the Property or (iii) the Maturity Date;
- (g) That Lender shall have the right to approve in writing a Subordinate Loan that Mortgagor may enter into after the date hereof, including, but not limited to, the subordinate lender, the amount of the Subordinate Loan, the use of the Subordinate Loan proceeds and the terms, covenants and conditions contained in the subordinate note, subordinate mortgage and any other subordinate loan documents that are to evidence and/or secure the Subordinate Loan. Mortgagor further understands, covenants and agrees that the subordinate lender shall be obligated to execute and deliver to Lender a subordination agreement in form and substance, acceptable to Lender in its sole discretion.
- (h) That it shall expend from the Borrower's own funds an additional \$2,250,000 after the date hereof to be used to cover the demolition of the existing improvements on the Premises and to complete the Remediation work at the Premises.
- (i) That it shall submit to Lender, no later than December 31, 2017, evidence satisfactory to Lender that the ULURP review has been completed and that the appropriate governmental agencies and boards authorized by the Charter have approved the rezoning of the Property.
- (j) To cause the Borrower to:
  - (i) pay, or cause the Guarantors to pay, any and all costs of environmental remediation from its or their own funds and shall not request Lender to increase the amount of the Loan to cover any such costs, including, but not limited to removal of the existing underground storage tanks, ("UST") one of which has been leaking, and the removal of any and all contaminated soil, as more particularly set forth in the Environmental Reports (collectively, the "**Remediation Work**") and to pay or cause Guarantors to pay any other costs (collectively, the "**Remediation Costs**") related to the Remediation Work, if such costs are not covered by the Budget, and Borrower shall deliver to Lender (a) a UST closure report, together with a no further action letter or a similar form from the applicable governmental authorities and (b) quarterly status reports of the Remediation Work and the Remediation Costs during the time until such Remediation Work is completed, as determined by Lender and its Construction Consultant in their sole discretion, which reports shall be delivered on the first day of January, April, June and September;



- (ii) not delay or allow Guarantors to delay the process of the Remediation Work in the event of a dispute as to the amount and/or nature of the environmental Remediation Costs; and
- (iii) (a) complete the Remediation Work (other than the placement of the clean fill soil) within one hundred fifty (150) days from the date hereof and (b) deliver the remediation closure report from the New York State Department of Environmental Conservation indicating that the Remediation Work is completed in accordance with the RAWP and all applicable Environmental Laws, to be delivered at the earlier of (x) Completion of Construction or (y) sixty (60) days after completion of the Remediation Work.

(k) Submit to Lender the RAWP within thirty (30) days from the date hereof.

4.4 **RIGHTS OF LENDER.** In addition to Lender's rights as a "**Secured Party**" under the UCC, Lender may, but shall not be obligated to, at any time after default without notice and at the expense of Mortgagor: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral.

During the continuance of a Default (hereinafter defined) (provided that in no event shall Lender have any obligation to accept a cure of a Default), under this Security Instrument, then in addition to all of Lender's rights as a "**Secured Party**" under the UCC or otherwise at law and in addition to Lender's rights under the Loan Documents:

- (a) Lender may (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license or otherwise dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and
- (b) Any proceeds of any disposition of any Collateral may be applied by Lender to the payment of expenses incurred by Lender in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Lender toward the payment of the Secured Obligations in such order of application as Lender may from time to time elect.

Notwithstanding any other provision hereof, Lender shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Lender unless Mortgagor shall make an express written election of said remedy under the UCC or

other applicable law. Mortgagor agrees that Lender shall have no obligation to process or prepare any Collateral for sale or other disposition. Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice.

- 4.5 **POWER OF ATTORNEY.** Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Mortgagor; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender. In addition, Mortgagor expressly agrees that any powers of attorney granted by Mortgagor subsequent to the date hereof shall expressly state that the powers of attorney provided for in this Security Instrument shall continue to be in full force and effect until this Security Instrument is terminated.

## **ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES**

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Borrower shall promptly pay and perform each Secured Obligation for which it is responsible hereunder when due. If Borrower fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may adversely affect Lender's rights in the Property, then Lender may (but is not obligated to), at Borrower's expense, take such action as it considers to be necessary to protect the value of the Property and Lender's rights in the Property, including the retaining of counsel, and any amount so expended by Lender will be added to the Secured Obligations and will be payable by Borrower to Lender on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.
- 5.2 **TAXES AND ASSESSMENTS.** Borrower shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Property or any interest therein. Borrower shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Lender pursuant to any Secured Obligation; provided, however, Borrower shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are measured by and imposed upon Lender's net income.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Borrower shall promptly discharge all liens, claims and encumbrances not approved by Lender in writing that has or may attain

priority over this Security Instrument; provided, however that Borrower may acquire air rights for the benefit of the Property without Lender's consent. Borrower shall pay when due all obligations secured by, or which may become, liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or Collateral, or any interest therein, whether senior or subordinate hereto.

**5.4 DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- (a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Mortgagor to Lender and, at the request of Lender, shall be paid directly to Lender, except as otherwise provided in this Section 5.4: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Lender to be maintained by Mortgagor, including, but not limited to, flood, earthquake, casualty and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Security Instrument, during the continuance of a Default (provided that in no event shall Lender have any obligation to accept a cure of a Default), Lender may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in such order and amounts as Lender in its sole discretion may choose, and/or Lender may release all or any part of the proceeds to Mortgagor upon any conditions Lender may impose. During the continuance of a Default (provided that in no event shall Lender have any obligation to accept a cure of a Default), Lender may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Lender; provided, however, in no event shall Lender be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Lender or its employees or agents.
- (b) If the amount of insurance or condemnation proceeds collected shall be less than or equal to \$500,000.00, Mortgagor shall have the right to retain such proceeds, provided that such proceeds are used solely to pay the cost of restoring the Property. If the amount of insurance or condemnation proceeds collected shall exceed \$500,000.00, but provided that less than fifty percent (50%) of the Improvements are subject to the casualty or condemnation, then Lender may require that such proceeds be held in an account pledged as additional security for the Loan and shall permit such insurance or condemnation proceeds to be used for repair or restoration but may condition such application upon the following conditions: (i) the deposit into the pledged account of such additional funds, in

excess of all collected casualty or condemnation proceeds, which Lender reasonably determines are needed to pay all costs of the repair or restoration; (ii) the establishment of an arrangement for lien releases and disbursement of funds reasonably acceptable to Lender; and (iii) the delivery to Lender of evidence acceptable to Lender (aa) that there has been no material adverse change in the financial condition or credit of Mortgagor and Mortgagor and any guarantors since the date of this Security Instrument; and (bb) of the satisfaction of any additional conditions that Lender may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Lender of such insurance or condemnation proceeds, then Lender may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Lender in its sole discretion may choose. Notwithstanding anything to the contrary contained herein, in the event that the casualty or condemnation affects fifty percent (50%) or more of the Improvements, the determination as to whether to rebuild and restore or apply insurance proceeds toward repayment of the Loan shall be made in the sole and absolute discretion of Lender.

- (c) Notwithstanding anything to the contrary contained herein or in Section 254 of the Real Property Law of the State of New York or any other provision of applicable law, the proceeds of insurance policies coming into the possession of the Mortgagee shall not be deemed trust funds and the Mortgagee shall apply any insurance proceeds it may receive pursuant thereto, or otherwise, to the payment of the restoration of the Property as long as Mortgagor has sufficient funds to restore and such restoration will be completed prior to the Maturity Date.

- 5.5 **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Borrower covenants: (a) to insure the Property and Collateral against such risks as Lender may reasonably require herein and, at Lender's request, to provide evidence of such insurance to Lender, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair; (c) except for the demolition of the existing structures on the Premises (as defined herein) and subject to the Mortgagee's receipt and approval of demolition permits, not to remove or demolish the Property or Collateral or any part thereof, not to alter or add to the Property or Collateral except in connection with permitted construction or in preparation for the proposed project; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed, provided that insurance proceeds are made available therefor in accordance with this Mortgage; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Property or Collateral; and (g) to

do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.

- 5.6 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Lender hereunder against all adverse claims. Mortgagor shall give Lender prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any material damage to the Property or Collateral and of any condemnation offer or action with respect to the Property or Collateral.
- 5.7 **ACTIONS BY LENDER.** From time to time, without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Lender, without liability therefor and without notice, may: (a) release all or any part of the Property from this Security Instrument; (b) consent to the making of any map or plat thereof; and (c) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Security Instrument.
- 5.8 **DUE ON SALE; ENCUMBRANCE.** If the Property or any interest therein or if any direct or indirect ownership interest in Mortgagor shall be sold, under contract to sell, transferred, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, or if there shall be any change in the management of the Property or Mortgagor in violation of the terms of the Loan Documents, in each case without the prior written consent of Lender, then Lender, in its sole discretion, may at any time thereafter declare all Secured Obligations immediately due and payable; provided, however, that Permitted Transfers shall be permitted without Lender consent or acceleration.
- 5.9 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property and Collateral or in any manner obligated under the Secured Obligations ("**Interested Parties**"), Lender may, from time to time and without notice to Mortgagor (i) release any person or entity from liability for the payment or performance of any Secured Obligation; (ii) take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation pursuant to a written agreement duly executed by Mortgagor; or (iii) accept additional security or release all or a portion of the Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Security Instrument upon the Property, the Collateral or any other security provided herein or in the other Loan Documents.

- 5.10 **RELEASE OF ASSIGNMENT.** When the Property has been fully released or discharged, the last such release or discharge shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.
- 5.11 **SUBROGATION.** Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to the Loan Documents or by the proceeds of any loan secured by this Security Instrument.
- 5.12 **RIGHT OF INSPECTION.** Lender, its agents, representatives and employees, may enter any part of the Property at any reasonable time upon reasonable notice for the purpose of inspecting the Property and Collateral and ascertaining Mortgagor's compliance with the terms hereof and the other Loan Documents.

## ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** The occurrence of any one or more of the following shall constitute an event of default after the expiration of all applicable grace, notice and cure periods ("**Default**") under this Mortgage and the other Loan Documents:
- (a) **Monetary.** Mortgagor's failure to pay when due (after any grace period) any sums payable under the Note or any of the other Loan Documents; or
  - (b) **Performance of Obligations.** Mortgagor's failure to perform any other obligation, covenant or condition under this Mortgage, the Note or any of the other Loan Documents, whether direct or indirect, absolute or contingent; **provided, however,** that if such failure is not capable of being cured within ten (10) days, the same shall not constitute a Default so long as Mortgagor has commenced and is diligently pursuing such cure and such cure is achieved no more than an additional sixty (60) days; or
  - (c) **Condemnation; Attachment; Liens.** (i) The sequestration or attachment of, or any levy or execution upon any of the Property, any other collateral provided by Mortgagor or any other party under any of the Loan Documents or any substantial portion of the other assets of Mortgagor, which sequestration, attachment, levy or execution is not released, expunged or dismissed within sixty (60) days; or (iii) the recording of any claim of lien against the Property and the continuance of such claim of lien for thirty (30) days after such recording, without discharge, satisfaction or provision for payment being made by Mortgagor in a manner satisfactory to Lender; or
  - (d) **Representations and Warranties.** (i) The failure of any material representation or warranty of Mortgagor in any of the Loan Documents or the Guarantor in the Guaranty or the Indemnitor in the Indemnity and the continuation of such failure for more than ten (10) days after written notice to Mortgagor from Lender requesting that Mortgagor cure such failure; or (ii) any material adverse change in

the financial condition of Mortgagor, any Guarantor with respect to Guarantor's obligation set forth in Section 13.1 of the Guaranty, or any Indemnitor from the financial condition represented to Lender as of the later of: (A) the Effective Date; or (B) the date upon which the financial condition of such party was first represented to Lender; or

- (e) Covenants. The violation of any covenant in the Loan Documents and the continuation of such violation for more than ten (10) days after written notice to Mortgagor from Lender requesting the cure of such violation; provided that, if such violation is not capable of being cured within ten (10) days, the same shall not constitute a Default so long as Mortgagor has commenced and is diligently pursuing such cure and such cure is achieved in no more than an additional sixty (60) days; or
- (f) Bankruptcy; Insolvency; Dissolution. (i) The filing by Mortgagor, any partner, manager or member of Mortgagor, any Guarantor, or any Indemnitor of a petition for relief under the Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; (ii) the filing against Mortgagor, any partner, manager or member of Mortgagor, any Guarantor, or any Indemnitor of an involuntary proceeding under the Bankruptcy Code or other debtor relief law and the failure of Mortgagor to effect a full dismissal of such proceeding within sixty (60) days after the date of filing such proceeding; (iii) a general assignment by Mortgagor, any partner, manager or member of Mortgagor, any Guarantor, or any Indemnitor for the benefit of creditors; or (iv) Mortgagor, any partner, manager or member of Mortgagor, any Guarantor, or any Indemnitor applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Mortgagor or any of its property; or
- (g) Change In Management or Control. The occurrence of any material change in Control of Mortgagor, which Lender determines, in its reasonable discretion, shall have a material adverse effect on the Loan, the Property, or the ability of Mortgagor or Mortgagor's partners, venturers, managers or members to perform their obligations under the Loan Documents; or
- (h) Transfer of Assets. The sale, assignment, lease, encumbrance, pledge, hypothecation, mortgage or transfer or any disposition, of all or a substantial portion of the assets of Mortgagor, or Guarantor (with respect to the Guarantor, only if same is in violation of the net worth and liquidity covenants set forth in the Guaranty) or any interest therein, other than in the ordinary course of business of said entity; or
- (i) Transfer of Interest. Any sale or transfer of any part of a legal entity of the Mortgagor without the prior written consent of Lender except for Permitted Transfers; or

- (j) Loss of Priority. The failure at any time of this Mortgage to be a valid first lien upon the Property or any portion thereof, other than as a result of any release or reconveyance of this Mortgage with respect to all or any portion of the Property pursuant to the terms and conditions of this Mortgage; or
- (k) Insurance. The failure to maintain in full force and effect any of the policies of insurance required by this Mortgage for a period of ten (10) days after notice from the Lender; or
- (l) Hazardous Materials. The discovery of any significant Hazardous Materials in, on or about the Property. Any such Hazardous Materials shall be "significant" for this purpose if said Hazardous Materials, in Lender's sole discretion, have a materially adverse impact on the value of the Property; or
- (m) Violation of Separate Purpose Entity Provisions. The occurrence of any default in the observance of the Separateness Provisions applicable to Mortgagor; or
- (n) Default Under Unsecured Hazardous Materials Indemnity Agreement. The occurrence of a default under any Hazardous Materials Indemnity Agreement (Unsecured), now or hereafter executed by an Indemnitor in connection with the Loan, in favor of Lender, including without limitation Indemnitor's failure to perform any covenant, condition, or obligation thereunder beyond all applicable grace, notice and cure periods set forth in such agreement;
- (o) Default Under Guaranty. The occurrence of a default under the Guaranty, or any other guaranty, now or hereafter executed in connection with the Loan, including without limitation any Guarantor's failure to perform any material covenant, condition, or obligation thereunder beyond all applicable grace, notice and cure periods set forth in such agreement; or
- (p) Default Under Swap. The occurrence of a default by Mortgagor or a termination event with respect to Borrower under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Borrower and Lender in connection with the Loan.
- (q) Subordinate Loan. Entering into a subordinate loan without the prior written consent of Lender. If Lender does approve a Subordinate Loan, then it shall be a Default hereunder upon the occurrence of a default under the Subordinate Loan beyond all applicable grace, notice and cure periods set forth in the subordinate loan documents evidencing and securing the Subordinate Loan.

6.2 **RIGHTS AND REMEDIES.** At any time during the continuance of a Default (provided that in no event shall Lender have any obligation to accept a cure of a Default), Lender shall have each and every one of the following rights and remedies in addition to Lender's rights under the other Loan Documents:

Acquisition Land Loan Mortgage, Assignment of Leases and Rents and Security Agreement  
 Peninsula Land Loan



- (a) With or without notice to Mortgagor, to declare all Secured Obligations immediately due and payable, and upon any such declaration the principal of the Note, any accrued and unpaid interest thereon and all other Secured Obligations shall become and be immediately due and payable, anything in the Note or in this Security Instrument to the contrary notwithstanding.
- (b) With or without notice to Mortgagor, and without releasing Mortgagor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Mortgagor and, in connection therewith, to enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Security Instrument or the rights or powers of Lender under this Security Instrument; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Lender, is or may be senior in priority to this Security Instrument, the judgment of Lender being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Security Instrument; or (iv) to employ counsel, accountants, contractors and other appropriate persons.
- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a deed of trust or mortgage or to obtain specific enforcement of the covenants of Mortgagor hereunder, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Mortgagor waives the defense of laches and any applicable statute of limitations.
- (d) To sell the Property or any part or parts thereof to the extent permitted and pursuant to the procedures provided by law and commencing a non-judicial foreclosure by power of sale, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law.
- (e) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Mortgagor hereby consents to such appointment.
- (f) To enter upon, possess, control, lease, manage and operate the Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Property, to make, terminate,

enforce or modify Leases of the Property upon such terms and conditions as Lender deems proper, to make repairs, alterations and improvements to the Property as necessary, in Lender's sole judgment, to protect or enhance the security hereof of the Property as necessary in Lender's sole judgment.

- (g) To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender determines in its sole discretion.
- (h) Upon sale of the Property at any foreclosure sale, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, to the extent permitted by law, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Mortgagor acknowledges and agrees that: (w) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Mortgagor and Lender; and (z) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.
- (i) Upon the completion of any foreclosure of all or a portion of the Property, commence an action to recover any of the Secured Obligations that remains unpaid or unsatisfied.

- (j) To exercise such other rights and/or remedies provided to mortgagee and/or a secured party by the Uniform Commercial Code as that model statute is enacted and in effect in the jurisdiction wherein the Premises are situated.
- (k) Exercise any and all remedies at law, equity, or under the Note, Security Instrument or other Loan Documents for such Default.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Lender under this Security Instrument other than those described in that certain Section hereof entitled Rights and Remedies or that certain Section hereof entitled Grant of License, less all costs and expenses incurred by Lender or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.
- 6.5 **NO CURE OR WAIVER.** Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or any receiver shall cure or waive any breach, Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Mortgagor has cured all other defaults), or limit or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of or security interests created by this Security Instrument.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Mortgagor agrees to pay to Lender immediately and without demand all costs and expenses of any kind incurred by Lender pursuant to this Article (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein).

- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Mortgagor hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices that Lender deems appropriate to protect Lender's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Property and Collateral, and (d) during the continuance of a Default (provided that in no event shall Lender have any obligation to accept a cure of a Default), Lender may perform any obligation of Mortgagor hereunder; provided, however, that: (i) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (ii) Lender shall not be liable to Mortgagor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Lender under this Section. In addition, Mortgagor expressly agrees that any powers of attorney granted by Mortgagor subsequent to the date hereof shall expressly state that the powers of attorney provided for in this Security Instrument shall continue to be in full force and effect until this Security Instrument is terminated.
- 6.8 **REMEDIES CUMULATIVE.** All rights and remedies of Lender provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Mortgagor and Lender. No failure on the part of Lender to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Lender in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Lender may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Lender shall not waive the agreement contained herein that time is of the essence, nor shall Lender waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

## **ARTICLE 7. MISCELLANEOUS PROVISIONS**

- 7.1 **NOTICES.** All notices, demands, or other communications under this Security Instrument and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Security Instrument). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that

notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	Peninsula Rockaway Limited Partnership c/o The Arker Companies 15 Verbena Avenue, Suite 100 Floral Park, New York 11001 Attention: Daniel Moritz Telephone: 516-277-9300 Facsimile: 516-277-9345
With a copy to:	Peninsula Rockaway Housing Development Fund Corp. c/o Northeast Brooklyn Housing Development Corporation 132 Ralph Avenue Brooklyn, New York 11233 Attention: Jeffrey Dunston Telephone: 718-453-9490 Facsimile: 718-453-2503
With a copy to:	Seiden & Schein, P.C 570 Lexington Avenue, 14 <sup>th</sup> Floor New York, New York 10022 Attention: Alvin Schein, Esq. Telephone: 212-935-1400 Facsimile: 212-593-4545
Lender:	Wells Fargo Bank, N.A. Winston-Salem Loan Center One West Fourth Street, 3rd Floor Winston-Salem, NC 27101 Attn: Disbursement Administrator Telephone: 336-747-8595 Facsimile: 866-588-0565
With a copy to:	Wells Fargo Bank, N.A. 150 East 42nd Street, 36th Floor New York, NY 10017 Attention: Jeffrey Nixon MAC J0161-361 Telephone: 212-214-7342 Facsimile: 917-260-1248

With a copy to:	Wells Fargo Bank, National Association Community Lending and Investment 1750 H Street, Suite 650 Washington, DC 20006 MAC R0135 - 060 Attention: Loan Administration Manager Telephone: 202-303-2982 Facsimile: 202-429-2988
With a copy to:	Holland & Knight LLP 31 West 52 <sup>nd</sup> Street New York, New York 10019 Attn: Kathleen M. Furey, Esq. Telephone: 212-513-3479 Facsimile: 212-385-9010

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Mortgagor shall forward to Lender, without delay, any notices, letters or other communications delivered to the Property or to Mortgagor naming Lender or any similar designation as addressee, or which could reasonably be deemed to adversely affect the ability of Mortgagor to perform its obligations to Lender under the Loan Documents.

- 7.2 **ATTORNEYS' FEES AND EXPENSES; ENFORCEMENT.** If the Note is placed with an attorney for collection or if an attorney is engaged by Lender to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, reinforcement of rights and remedies, then in all events, Mortgagor agrees to pay to Lender all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of the Note or this Security Instrument shall constitute a waiver of any breach, default, or failure of condition under the Note, this Security Instrument or the obligations secured thereby. A waiver of any term of the Note, this Security Instrument or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.
- 7.4 **SEVERABILITY.** If any provision or obligation under this Security Instrument shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Security Instrument and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full

force as though the invalid, illegal, or unenforceable provision had never been a part of this Security Instrument.

- 7.5 **HEIRS, SUCCESSORS AND ASSIGNS.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Security Instrument shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto, including, without limitation, subsequent owners of the Property or any part thereof.
- 7.6 **ATTORNEY-IN-FACT.** Mortgagor hereby irrevocably appoints and authorizes Lender as Mortgagor's attorney-in-fact, which agency is coupled with an interest, and as such attorney-in-fact Lender may, without the obligation to do so, execute and/or record in Lender's or Mortgagor's name any notices, instruments or documents that Lender deems appropriate to protect Lender's interest under any of the Loan Documents. In addition, Mortgagor expressly agrees that any powers of attorney granted by Mortgagor subsequent to the date hereof shall expressly state that the powers of attorney provided for in this Security Instrument shall continue to be in full force and effect until this Security Instrument is terminated.
- 7.7 **TIME.** Time is of the essence of each and every term herein subject to applicable grace, notice and cure periods.
- 7.8 **GOVERNING LAW AND CONSENT TO JURISDICTION.** With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the liens created pursuant to this Security Instrument, this Security Instrument shall be governed by, and construed in accordance with, the laws of the State of New York, it being understood that, except as expressly set forth above in this paragraph and to the fullest extent permitted by the laws of the State of New York, the laws of the State of New York shall govern any and all matters, claims, controversies or disputes arising under or related to this Security Instrument, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties relating to this Security Instrument and the other Loan Documents and all of the indebtedness or obligations arising thereunder or hereunder. Mortgagor hereby consents to the jurisdiction of any federal or state court within New York having proper venue and also consent to service of process by any means authorized by the State of New York or federal law.
- 7.9 **SECTIONS 254 AND 273 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.** All covenants hereof shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of Sections 254 and 273 of the Real Property Law of the State of New York, or any other applicable law.
- 7.10 **IMPROVEMENT BY MORE THAN SIX (6) DWELLING UNITS.** This Security Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six (6) dwelling units, each having their own separate cooking facilities.

- 7.11 **JOINT AND SEVERAL LIABILITY.** The liability of all persons and entities obligated in any manner hereunder and under any of the Loan Documents shall be joint and several.
- 7.12 **HEADINGS.** All article, section or other headings appearing in this Security Instrument are for convenience of reference only and shall be disregarded in construing this Security Instrument.
- 7.13 **COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 7.14 **DEFINED TERMS.** The following capitalized terms generally used in this Mortgage shall have the meanings defined or referenced below.
- (a) **"Bankruptcy Code"** - means the Bankruptcy Reform Act of 1978 (11 USC § 101-1330) as now or hereafter amended or recodified.
  - (b) **"Budget"** – means a statement, as approved by Lender prior to the Effective Date and as may be modified with the approval of Lender, in its discretion, in accordance with and to the extent required under this Mortgage, setting forth, by category, the costs of acquisition of the Property.
  - (c) Intentionally Omitted.
  - (d) **"Control"** – means, when used with respect to any Person, the power to direct the day to day management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise, and the terms "controlling," "controlled by" and "under common control with" shall have the meanings correlative therewith.
  - (e) **"Development Plan"** - means the development plan for the Property prepared by Aufgang Architects indicating how each of the Individual Development Sites (as defined in the Note) at the Property is to be developed for multifamily and commercial buildings and including a report from the Borrower's architect confirming the buildable square feet of each site and the applicable zoning for each site.



- (f) **"Effective Date"** – means May 5, 2019.
- (g) **"Environmental Report"** – means, collectively, that certain (i) Phase I Environmental Site Assessment dated October 24, 2015, prepared by Lawrence Environmental Group, (ii) Phase II Environmental Site Assessment for Block 15842, Lot 1 dated April 12, 2016 prepared by FPM Group, (iii) Phase II Environmental Site Assessment for Lot 15843, Lot 1 dated November 24, 2015 prepared by PVE Sheffler and Lawrence Environmental Group and (iv) the RAWP.
- (h) **"Extended Maturity Date"** - means May 5, 2018.
- (i) **"Guarantor"** – means, collectively, Sol Arker, an individual, Allan Arker, an individual, Alexander Arker, an individual, Daniel Moritz, an individual, David Schwartz, an individual, Martin Nussbaum, an individual, and any other person or entity who, or which, in any manner, is or becomes obligated to Lender under any guaranty now or hereafter executed in connection with respect to the Loan (collectively or severally as the context thereof may suggest or require).
- (j) **"Guaranty"** - means those certain guaranty agreements identified on Exhibit B of this Mortgage (collectively, as they heretofore may have been amended from time to time).
- (k) **"Hazardous Materials"** – means, except as previously disclosed to Lender in the Environmental Report, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, mold, toxic mold, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants or contaminants" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations. "Hazardous Materials" shall not include commercially reasonable amounts of such materials used in the ordinary course of operation of the Property which are used and stored in accordance with all applicable Hazardous Materials Laws.
- (l) **"Hazardous Materials Laws"** – means all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control

Act, as amended, 15 U.S.C. Section 2601 et seq.; the Hazardous Materials Transportation Act, as amended 49 U.S.C. Section 1801 et seq.; the Atomic Energy Act, as amended, 42 U.S.C. Section 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; each as now and hereafter amended, and the regulations thereunder, and any other applicable local, state and/or federal laws or regulations that govern (i) the existence, cleanup and/or remedy of contamination on the Property; (ii) the protection of the environment from released, spilled, deposited or otherwise emplaced contamination; (iii) the control of hazardous wastes; or (iv) the use, generation, transport, treatment, removal or recovery of Hazardous Materials, including any and all building materials.

- (m) "**Indemnitor**" – means Borrower and Guarantor, and any other person or entity who, or which, in any manner, is or becomes obligated to Lender under any indemnity now or hereafter executed with respect to the Loan (collectively or severally as the context thereof may suggest or require).
- (n) "**Indemnity**" - means that certain indemnity agreement identified on Exhibit B of this Mortgage (as it heretofore may have been amended from time to time).
- (o) "**Initial Development Site**" - means the portion of the Premises which shall be identified by a specific block and lot by the New York City Department of Finance once the ULURP (as that term is defined in Section 4.3(h) hereof) process is finalized and the Premises are re-zoned which Borrower will be developing first after the date hereof.
- (p) "**Liquid Assets**" means the following: (a) unrestricted and unencumbered cash, cash equivalents and readily marketable securities (valued, in the case of securities at the then prevailing market price listed on NYSE or NASDAQ, as of any applicable date of determination) or such other assets or properties as Lender may (in its sole discretion) deem acceptable as evidenced by Lender's written confirmation, excluding any and all retirement accounts and deferred profit-sharing accounts, which are: (i) owned by Borrower, as the case may be, alone (and not jointly with any other person or entity, unless said other person or entity is a party included in the definition of "**Borrower**" hereunder) in a non-margin account identified as being owned by Borrower alone or an entity wholly owned by Borrower; and (ii) free and clear of any lien, security interest, assignment, right of setoff or other encumbrance of any kind; less (b) outstanding unsecured debt (under revolving lines of credit or otherwise) of any one or more of the persons/trusts which comprise Borrower, as the case may be.

- (q) **"Loan Documents"** - means those documents, as hereafter amended, supplemented, replaced or modified, properly executed and in recordable form, if necessary, listed in Exhibit B as Loan Documents.
- (r) **"Maturity Date"** - means the Original Maturity Date or the Extended Maturity, as applicable.
- (s) **"Mortgagor's Funds"** - means all funds of Mortgagor deposited with Lender pursuant to the terms and conditions of this Mortgage.
- (t) **"Original Maturity Date"** - means May 5, 2018.
- (u) **"Other Related Documents"** - means those documents, as hereafter amended, supplemented, replaced or modified from time to time, properly executed and in recordable form, if necessary, listed in Exhibit B as Other Related Documents.
- (v) **"Permitted Transfers"** – means direct and indirect transfers of interest in members of Mortgagor provided that at all times Guarantor collectively owns no less than twenty-five percent (25%) of Mortgagor and maintains control of Mortgagor's decision making.
- (w) **"Person"** – means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.
- (x) **"Premises"** – means the land located at 51-15 Beach Channel Drive, Far Rockaway, Queens, New York 11691
- (y) **"Project"** the financing of the acquisition of the Premises and any and all improvements now or hereafter located on the Premises
- (z) **"RAWP"** the remedial action work plan to be delivered within thirty (30) days from the date hereof and to be prepared by a consultant selected by Borrower and acceptable to Lender.
- (aa) **"Separateness Provisions"** - shall have the meaning ascribed to such term in that certain Section hereof entitled "Representations, Warranties and Covenants Regarding Special Purpose Entity Status".
- (bb) **"Subordinate Loan"** – shall mean any subordinate loan made after the date hereof approved in writing by Lender in accordance with the terms hereof, evidenced by a subordinate note and secured by a subordinate mortgage.

(cc) **"Title Policy"** - means the ALTA Lender's Policy of Title Insurance as issued by Kensington Vanguard National Land Services of New York, as agent for Stewart Title Insurance Company or any reputable insurance company licensed in New York reasonably acceptable to Lender.

- 7.15 **RULES OF CONSTRUCTION.** The word "Mortgagor" as used herein shall include both the named Mortgagor and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Mortgagor under the Note and the other Loan Documents. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Security Instrument is executed by more than one person, the term "Mortgagor" shall include all such persons. The word "Lender" as used herein shall include Lender, its successors, assigns and affiliates. The term "Property" and "Collateral" means all and any part of the Property and Collateral, respectively, and any interest in the Property and Collateral, respectively.
- 7.16 **USE OF SINGULAR AND PLURAL; GENDER.** When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.
- 7.17 **EXHIBITS, SCHEDULES AND RIDERS.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Security Instrument by such attachment for all purposes.
- 7.18 **INCONSISTENCIES.** In the event of any inconsistencies between the terms of this Security Instrument and the terms of the Note, including without limitation, provisions regarding collection and application of Property revenue, required insurance, tax impounds, and transfers of the Property, the terms of the Note, as applicable, shall prevail.
- 7.19 **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing.
- 7.20 **WAIVER OF MARSHALLING RIGHTS.** Mortgagor, for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property and Collateral, hereby waives all rights to have the Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation marshalled upon any foreclosure of the lien of this Security Instrument or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Property and any or all of the Collateral or other property as a whole or in separate parcels, in any order that Lender may designate.
- 7.21 **ADVERTISING.** In connection with the Loan, Mortgagor hereby agrees that Wells Fargo & Company and its subsidiaries ("Wells Fargo") may publicly identify details of

the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail, or internet advertising or communications. Such details may include the name of the Property, the address of the Property, the amount of the Loan, the date of the closing and a description of the size/location of the Property.

7.22 **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Mortgagor which apply to this Security Instrument and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference.

7.23 **REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING SPECIAL PURPOSE ENTITY STATUS.** Mortgagor hereby represents, warrants and covenants to Lender, with regard to Mortgagor, as follows:

- (a) **Limited Purpose.** The sole purpose to be conducted or promoted by Mortgagor since its organization is to engage in the following activities: (i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve the Property; (ii) to enter into and perform its obligations under the Loan Documents; (iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Property and the Proposed Construction to the extent permitted under the Loan Documents; and (iv) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of New York related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.
- (b) **Limitations on Debt, Actions.** Notwithstanding anything to the contrary in the Loan Documents or in any other document governing the formation, management or operation of Mortgagor, Mortgagor shall not (i) guarantee any obligation of any person or entity, including any affiliate, or become obligated for the debts of any other person or entity or hold out its credit as being available to pay the obligations of any other person or entity; (ii) engage, directly or indirectly, in any business other than as required or permitted to be performed under this Section; (iii) incur, create or assume any indebtedness or liabilities other than the Loan; (iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any person or entity, except that Mortgagor may invest in those investments permitted under the Loan Documents; (v) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the

ordinary course of Mortgagor's business; (vi) buy or hold evidence of indebtedness issued by any other person or entity (other than cash or investment-grade securities); (vii) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity; or (viii) own any asset or property other than the Property and incidental personal property necessary for the ownership or operation of the Property.

- (c) **Separateness Covenants.** In order to maintain its status as a separate entity and to avoid any confusion or potential consolidation with any affiliate, Mortgagor represents and warrants that in the conduct of its operations since its organization it has and will continue to observe the following covenants (collectively, the "**Separateness Provisions**"): (i) maintain books and records and bank accounts separate from those of any other person or entity; (ii) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets; (iii) comply with all organizational formalities necessary to maintain its separate existence; (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; (v) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other person or entity except that Mortgagor's assets may be included in a consolidated financial statement of its' affiliate so long as appropriate notation is made on such consolidated financial statements to indicate the separateness of Mortgagor from such affiliate and to indicate that Mortgagor's assets and credit are not available to satisfy the debts and other obligations of such affiliate or any other person or entity; (vi) prepare and file its own tax returns separate from those of any person or entity to the extent required by applicable law, and pay any taxes required to be paid by applicable law; (vii) allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; (ix) not enter into any transaction with any affiliate, except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written, enforceable agreements; (x) conduct business in its own name, and use separate stationery, invoices and checks bearing its own name; (xi) not commingle its assets or funds with those of any other person or entity; (xii) not assume, guarantee or pay the debts or obligations of any other person or entity; (xiii) correct any known misunderstanding as to its separate identity; (xiv) not permit any affiliate to guarantee or pay its obligations (other than limited guarantees and indemnities pursuant to the Loan Documents); (xv) not make loans or advances to any other person or entity; (xvi) pay its liabilities and expenses out of and to the extent of its own funds; (xvii) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds; (xviii) maintain adequate capital or commitments for capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require any equity owner to make additional capital contributions to Mortgagor; and (xvix) cause the managers, officers, employees, agents and other

representatives of Mortgagor to act at all times with respect to Mortgagor consistently and in furtherance of the foregoing and in the best interests of Mortgagor.

Failure of Mortgagor to comply with any of the covenants contained in this Section 7.23 or any other covenants contained in this Mortgage shall not affect the status of Mortgagor as a separate legal entity.

- (d) SPE Covenants in Borrower Organizational Documents. Mortgagor covenants and agrees to incorporate the provisions contained in this Section 7.23 into Mortgagor's organizational documents and Mortgagor agrees not to amend, modify or otherwise change its organizational documents with respect to the provisions of this Section 7.23.

#### 7.24 FINANCIAL STATEMENTS.

- (a) Borrower Financial Statements. Borrower shall deliver to Lender, as soon as available, but in no event later than ninety (90) days after the end of each calendar year, in form and substance reasonably satisfactory to Lender annual financial statements for Borrower, including a balance sheet, statements of financial condition, and, to the extent the project has commenced leasing, an income statement and a statement of cash flow.
- (b) Other Financial Information. On a quarterly basis, Borrower shall provide to Lender written evidence verifying Borrower's Liquid Assets, in such form and substance satisfactory to Lender. Within fifteen (15) days of Lender's request, Borrower shall cause to be delivered to Lender such quarterly and other financial information regarding any persons or entities in any way obligated on the Loan as Lender may reasonably request. If audited financial information is prepared, Borrower shall deliver to Lender copies of that information within fifteen (15) days of its final preparation.
- (c) Tax Returns. On an annual basis, or more frequently upon Lender's request and to the extent Borrower is required by law to file the same or if Mortgagor files the same, Mortgagor shall deliver to Lender within fifteen (15) days of filing or on October 15 of each year, whichever is earlier complete copies of federal and state tax returns for Borrower, as applicable, together with all schedules thereto. In the event an extension is filed, Borrower shall deliver to Lender a copy of the extension within fifteen (15) days from filing.
- (d) Books and Records. Borrower shall maintain complete books of account and other records for the Property and for disbursement and use of the proceeds of the Loan, and Borrower's Funds and the same shall be available for inspection and copying by Lender upon reasonable prior notice.

- (e) Guarantor Financial Reporting. After the date hereof, each June 30<sup>th</sup> and December 31<sup>st</sup> of each year until the Loan is paid in full, Borrower shall cause to be delivered to Lender (x) the financial reporting required of the Guarantor pursuant to the terms of the Guaranty including delivery of compliance certificates certified by Borrower and Guarantors stating that no defaults exist under the Loan Documents or the Guaranty (or if a default exists identifying the nature of such default and the status thereof); and (y) copies of all bank and brokerage statements necessary for Lender to determine the Minimum Liquidity of Guarantor, which copies indicate the calculations and computations in reasonable detail necessary for Lender to determine the Minimum Liquidity of Guarantor as set forth in Section 12.1 of the Guaranty.
- (f) Other Information. From time to time, upon Lender's delivery to Borrower of at least ten (10) days prior written notice, such other information with regard to Borrower, partners of Borrower or the Property, as Lender may reasonably request in writing.
- (g) Form, Warranty. Borrower agrees that all financial statements to be delivered to Lender pursuant to this Section shall: (a) be complete and correct; (b) present fairly the financial condition of the party; (c) disclose all liabilities that are required to be reflected or reserved against; and (d) be prepared in accordance with generally accepted accounting principles, consistently applied. Notwithstanding the foregoing, the calculation of liabilities shall NOT include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*) or other FASB standards allowing entities to elect fair value option for financial liabilities. Therefore, the amount of liabilities shall be the historical cost basis, which generally is the contractual amount owed adjusted for amortization or accretion of any premium or discount. Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports. By Borrower's execution of this Mortgage, Borrower shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement, there has been no change in financial condition which would have a material adverse change, nor have any assets or properties been sold, transferred, assigned, mortgaged, pledged or encumbered since the date of such financial statement, except as disclosed by Borrower in writing delivered to Lender. Borrower agrees that all rent rolls and other information to be delivered to Lender pursuant to this Section shall not contain any misrepresentation or omission of a material fact.

7.25 INTENTIONALLY OMITTED.



7.26 **CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT.** Lender's obligation to make the Loan shall be subject to the satisfaction of each and every one of the following conditions precedent:

- (a) There shall exist no Default, as defined in this Mortgage or Default as defined in any of the Loan Documents or Other Related Documents, or event, omission or failure of any condition which would constitute a Default after notice or lapse of time, or both.
- (b) Receipt and approval by Lender of an executed original of this Mortgage, each of the Loan Documents, the Other Related Documents and any and all other documents, instruments, due diligence, policies and forms of evidence or other materials which are required pursuant to this Mortgage or any of the other Loan Documents or as otherwise required by Lender, including the permits, regulatory approvals, licenses, authorizations, when such items become available after the Property is re-zoned in accordance with the ULURP each in form and content reasonably acceptable to Lender.
- (c) Receipt and approval of the Title Policy, including any and all easements affecting the Property, in form and content reasonably acceptable to Lender and, to the extent that the Title Policy is dated prior to the date of the initial disbursement hereunder, Lender shall have received from the title company that issued the Title Policy a continuation report of, or endorsement to, the Title Policy setting forth no additional exceptions (including survey exceptions) except those approved by Lender in writing.
- (d) Lender's review of any and all other collateral for the Loan and/or other documentation as may be necessary to perfect the Lender's first lien on the Property.
- (e) Lender shall have received and approved the following: (i) the Environmental Report and; (ii) copies of all agreements that have been executed as of the date hereof which are material to the acquisition of the Property.
- (f) Borrower shall have opened and shall maintain all operating, reserve and other accounts related to the Project at Lender.
- (g) Lender shall have received evidence of insurance policies as required pursuant to the terms of this Mortgage.
- (h) The representations and warranties contained in this Mortgage are true and correct in all material respects.
- (i) Mortgagor shall, at Mortgagor's sole cost and expense, deliver to Lender a written appraisal prepared in conformance with the requirements of the Comptroller of the Currency confirming to the satisfaction of Lender in its sole discretion that the

Loan as a percentage of the “as-is” fair market value of the Property as of the date of such appraisal does not exceed forty (40%) percent (“Loan-to-Value Percentage”).

- (j) Insurance Policies for casualty, liability, flood and such other policies as may be required by Lender and shall be in coverage amounts acceptable to Lender in its sole discretion and contain language that such policies cannot be cancelled except upon thirty (30) days prior written notice to Lender and that no act or thing done or omitted by Lender shall invalidate such policies as against Lender.
- (k) Lender shall have received all organizational documents of Mortgagor, in form and content reasonably satisfactory to Lender, and evidence that Mortgagor is in good standing in its state of formation and states where it conducts business.
- (l) Lender shall have received all organizational documents of Indemnitor, in form and content reasonably satisfactory to Lender, and evidence that the Indemnitor is in good standing in its state of formation and states where it conducts business.
- (m) Receipt by Lender of UCC, judgment, lien, litigation and bankruptcy searches of Mortgagor and Indemnitor.
- (n) Mortgagor has delivered to Lender, at Mortgagor's expense, an opinion of legal counsel in form and content reasonably satisfactory to Lender to the effect that: (a) upon due authorization, execution and recordation or filing as may be specified in the opinion, each of the Loan Documents shall be legal, valid and binding instruments, enforceable against the makers thereof in accordance with their respective terms; (b) Mortgagor is duly formed and has all requisite authority to enter into the Loan Documents; and (c) as to such other matters, incident to the transactions contemplated hereby, as Lender may reasonably request.
- (o) Lender shall have received (x) a survey of the Property prepared for Lender, certified to the title insurer and Lender, its successors and assigns, and insurable by the title insurer, by a land surveyor licensed in New York and acceptable to Lender and (y) a flood certification indicating that a portion of the Property is not in a flood zone and a portion of the Property is in a flood zone.
- (p) Lender shall have received, reviewed and approved the terms and conditions of (i) that certain Agreement of Purchase and Sale by and between Congregation Yitzchok Vmoshe Eliyahu and Vista Development Corp. dated as of August 18, 2015; (ii) that certain Assignment and Assumption Agreement by Borrower dated as of the date hereof and (iii) approval by the New York State Attorney General of the sale to Borrower.
- (q) Borrower shall reimburse Lender or pay the costs incurred by Lender related to the Loan, including but not limited to appraisal fees, environmental audits, consultants, attorney's fees and the Commitment Fee.

- (r) Review by Lender of the zoning of the Premises.
- (s) Receipt by Lender of the Development Plan.
- (t) Receipt by Lender of a schedule of Borrower's Equity expended on the Property satisfactory to Lender in its sole discretion.
- (u) Review and approval of the credit and financial condition of Borrower and each Guarantor, including the Guarantor's Minimum Liquidity.
- (v) Borrower acknowledges and agrees that a portion of the Loan in the amount of \$1,136,000 (the "**Interest Reserve**") shall be set aside and shall be automatically advanced by Lender on a monthly basis to pay the interest due on the Note. Borrower further acknowledges, covenants and agrees that if the funds for the Interest Reserve are insufficient to pay the interest due under the Note, then Borrower shall deposit with Lender additional funds in an amount determined by the Lender to be sufficient to pay the interest due on the Note and that such additional funds can be deposited from the Borrower's own cash or from the Subordinate Loan. Borrower hereby grants to Lender a security interest in the funds set aside in the Interest Reserve and which security interest shall terminate when the Loan is paid in full.

Unless otherwise specified in writing by Lender at the time of the initial disbursement, the making of the initial disbursement shall be conclusive evidence that the above conditions have been fully satisfied or deemed satisfied as of the date of the initial disbursement.

- 7.27 **Exculpation of Borrower.** Notwithstanding anything to the contrary herein (other than the provisions of the last sentence of this section), Lender agrees that it will look solely to the property and assets of Mortgagor and to the Property and assets of Guarantor to the extent of his (its) or their liability under the Guaranty and/or the Indemnity and no other property or assets of the Mortgagor, its (their) principals, members, officers, directors, partners, shareholders or its successors and assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the Lender or for any payment required to be made under this Mortgage or the Note; provided that the foregoing shall not (i) constitute a waiver of any obligation evidenced by this Mortgage or the Note, (ii) limit the right of the holder of the Note and this Mortgage to name the Mortgagor as a party defendant in any action or suit for judicial foreclosure and sale under this Mortgage or any action or proceeding hereunder or under the Note so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against the Mortgagor, (iii) affect in any way the validity of any guaranty from any person of all or any of the obligations evidenced and secured by the Note and this Mortgage, (iv) release or impair the Note or the lien of this Mortgage, (v) prevent or in any way hinder the Lender from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the Property, any deposits or other collateral, any letters of credit or any other instrument

securing the Note or as prescribed by law or in equity in case of default, (vi) relieve the Mortgagor and/or any indemnitor of any of its (their) obligations under the Indemnity delivered by the Indemnitor to the Lender, or (vii) relieve the Mortgagor from liability in the event of a violation of Article 3-A of the Lien Law of the State of New York.

- 7.28 **Exculpation of Nominee.** Notwithstanding anything to the contrary contained in the Loan Documents, the liability and obligation of the Nominee to perform and observe and make good the obligations contained in the Loan Documents and to pay the Secured Obligations in accordance with the provisions of the Note and this Mortgage shall not be enforced by any action or proceeding wherein damages or any money judgment or any deficiency judgment or any judgment establishing any personal obligation or liability shall be sought, collected or otherwise obtained against the Nominee or against any past, present or future partner, officer, director or shareholder of the Nominee, and Mortgagee for itself and its successors and assigns irrevocably waives any and all right to sue for, seek or demand any such damages, money judgment, deficiency judgment or personal judgment against the Nominee or against any past, present or future partner, officer, director or shareholder of the Nominee under or by reason of or in connection with the Loan Documents and agrees to look solely to the security and collateral held under or in connection with the Loan Documents for the enforcement of such liability and obligation of the Nominee. Nothing contained in this paragraph shall be construed (i) as preventing Mortgagee from naming the Nominee or any past, present or future partner, officer, director or shareholder of the Nominee in any action or proceeding brought by Mortgagee to enforce and to realize upon the security and collateral provided under or in connection with the Loan Documents so long as no judgment, order, decree or other relief in the nature of a personal or deficiency judgment or otherwise establishing any personal obligation shall be asked for, taken, entered or enforced against the Nominee or against any past, present or future partner, officer, director or shareholder of the Nominee, in any such action or proceeding, or (ii) as modifying, qualifying or affecting in any manner whatsoever the lien and security interests created by this Mortgage and the other Loan Documents or the enforcement thereof by Mortgagee, or (iii) as modifying, qualifying or affecting in any manner whatsoever the personal recourse undertakings, obligations and liabilities of any person, party or entity under any guaranty of payment, completion guaranty, other guaranty or indemnification agreement now or hereafter executed and delivered to Mortgagee in connection with the Loan Documents or in connection with the loan secured by this Mortgage, or (iv) as modifying, qualifying or affecting in any manner whatsoever the personal recourse liability of the Nominee or any past, present or future partner, officer, director or shareholder of the Nominee or any other person, party or entity for fraud, willful misrepresentation or wrongful misappropriation or divergence of insurance proceeds, condemnation proceeds or the Payments, or (v) as modifying, qualifying or affecting in any manner whatsoever the personal recourse undertakings, liabilities and obligations of the Borrower under the Loan Documents.

**[Remainder of page intentionally left blank.]**


IN WITNESS WHEREOF, Mortgagor has executed this Security Instrument under seal as of the date set forth above.

**BORROWER:**

**PENINSULA ROCKAWAY LIMITED  
PARTNERSHIP,**  
a New York limited partnership

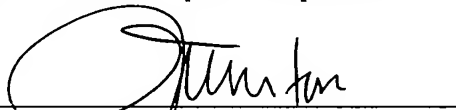
By: Peninsula Rockaway GP LLC,  
a New York limited liability company,  
its General Partner

By: Rockaway Beach Channel Partners LLC,  
a New York limited liability company,  
its Managing Member

By:   
Daniel Moritz  
Manager

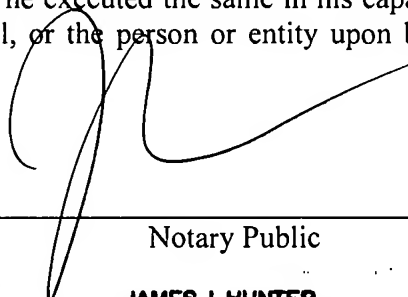
**NOMINEE:**

**PENINSULA ROCKAWAY HOUSING  
DEVELOPMENT FUND CORP.,**  
a New York not-for-profit corporation

By:   
Jeffrey Dunston  
President

STATE OF NEW YORK     )  
   )  
 COUNTY OF NEW YORK    )     ss.:

On the 4<sup>th</sup> day of May in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared **Daniel Moritz**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

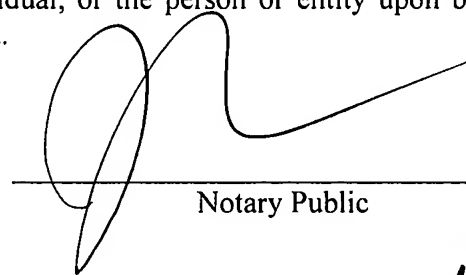


**SEAL**

Notary Public  
**JAMES J. HUNTER**  
 Notary Public, State of New York  
 No.01HU5005744  
 Qualified in Nassau County  
 Commission Expires December 14, 2018

STATE OF NEW YORK     )  
   )  
 COUNTY OF NEW YORK    )     ss.:

On the 4<sup>th</sup> day of May in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared **Jeffrey Dunston**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.



**SEAL**

Notary Public  
**JAMES J. HUNTER**  
 Notary Public, State of New York  
 No.01HU5005744  
 Qualified in Nassau County  
 Commission Expires December 14, 2018

EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to Land Acquisition Loan Mortgage, Assignment of Leases and Rents and Security Agreement between Peninsula Rockaway Limited Partnership, a New York limited partnership, as Borrower, and Peninsula Rockaway Housing Development Fund Corp., as Nominee, (collectively, the "**Mortgagor**") and Wells Fargo Bank, N.A., a national banking association as "Lender", dated as of May 5, 2016.

All that certain real property located in Queens County, State of New York, described as follows:

The land referred to in this Certificate of Title is described as follows:

BLOCK: 15842 LOT: 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Rockaway Beach Boulevard, with the westerly side of Beach 50th Street;

RUNNING THENCE northerly along the westerly side of Beach 50th Street, 276.83 feet;

THENCE westerly at right angles to said Beach 50th Street, 260.00 feet;

THENCE southerly at right angles to the last mentioned course, 292.98 feet to the northerly side of Rockaway Beach Boulevard;

THENCE easterly along the northerly side of Rockaway Beach Boulevard, 16.61 feet;

THENCE continuing easterly, along the northerly side of Rockaway Beach Boulevard, 243.93 feet to the corner first above mentioned, at the point or place of BEGINNING.

BLOCK: 15843 LOT: 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Beach Channel Drive, with the easterly side of Beach 53rd Street;

RUNNING THENCE easterly along the southerly side of Beach Channel Drive, 430.06 feet;

THENCE southerly along a line forming an interior angle of 89 degrees 05 minutes 53 seconds with the southerly side of Beach Channel Drive, 713.87 feet to the northerly side of Rockaway Beach Boulevard;

Acquisition Land Loan Mortgage, Assignment of Leases and Rents and Security Agreement  
Peninsula Land Loan

THENCE westerly along the northerly side of Rockaway Beach Boulevard, 223.38 feet actual (223.42 feet deed) to an angle point;

THENCE southwesterly along the northerly side of Rockaway Beach Boulevard, 162.34 feet;

THENCE still southwesterly along the northerly side of Rockaway Beach Boulevard, 56.49 feet to the corner formed by the intersection of the northwesterly side of Rockaway Beach Boulevard, with the easterly side of Beach 53rd Street;

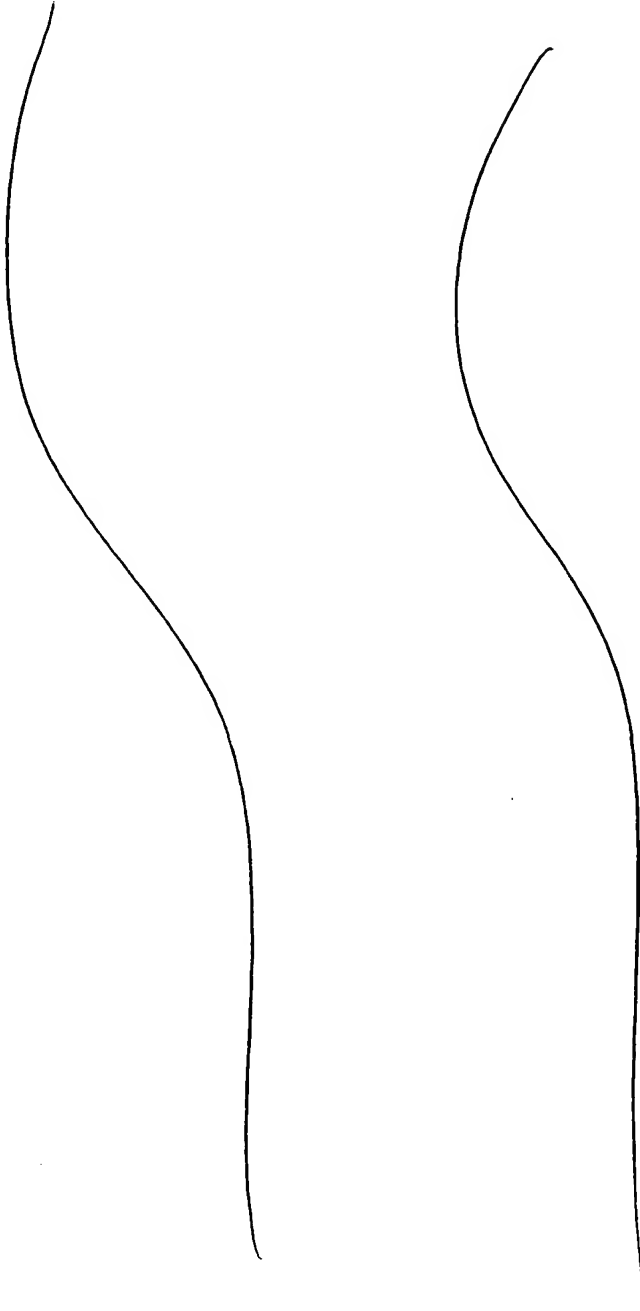
THENCE northerly along the easterly side of Beach 53rd Street, 794.23 feet to the corner first above mentioned, at the point or place of BEGINNING.



EXHIBIT B- DOCUMENTS

1. LOAN DOCUMENTS. The documents listed within this Section 1, inclusive, and amendments, modifications and supplements thereto which have received the prior written consent of Lender, together with any documents executed in the future that are approved by Lender and that recite that they are "Loan Documents" for purposes of this Mortgage are collectively referred to herein as the Loan Documents.
  - 1.1 This Mortgage.
  - 1.2 Land Acquisition Loan Promissory Note of even date herewith in the original principal amount of \$14,200,000 made by Borrower payable to the order of Lender.
  - 1.3 Uniform Commercial Code National UCC Financing Statement (Form UCC-1) of even date herewith:
    - (a) Related to the Mortgage and naming Mortgagor as Debtor and Lender as Secured Party; and
    - (b) Related to the Collateral Assignment and Pledge of Partnership Interests naming Peninsula Rockaway GP LLC, as Debtor, and Lender, as Secured Party.
    - (c) Related to the Collateral Assignment and Pledge of Interest
  - 1.4 Assignment of Contracts of even date herewith executed by Mortgagor in favor of Lender.
  - 1.5 Collateral Assignment and Pledge of Partnership Interests and Security Agreement executed by Peninsula Rockaway GP LLC in favor of Lender.
2. OTHER RELATED DOCUMENTS (WHICH ARE NOT LOAN DOCUMENTS)
  - 2.1 Hazardous Materials Indemnity Agreement (Unsecured) of even date herewith executed by and between Indemnitor and Lender (the "Indemnity")
  - 2.2 Affidavit of Borrower and Guarantor executed by Borrower and Guarantor in favor of Lender
  - 2.3 Declaration of Interests and Nominee Agreement dated May 5, 2016 executed by and between the Nominee and Borrower
  - 2.4 Opinion of Nominee's and Borrower's Legal Counsel of even date herewith.

- 2.5 The Guaranty Agreement (Payment, Carrying Costs and Non-Recourse Carveouts) of even date herewith made by Guarantor in favor of Lender (the "Guaranty").



## EXHIBIT C – EVALUATION MATERIALS

The Mortgagor shall initiate the Lender's review period of any Proposed Financing with delivery of standard and customary underwriting information as well as any other materials that the Lender shall reasonably request. These materials should include but are not limited to:

- Acceptable project location
  - Street address and/or block and lot information
  - Description of area
- Acceptable project overview / description
  - Highlights
  - Approximate gross square footage with breakdown for parking, residential, retail/commercial, etc.
  - Approximate net square footage with breakdown for parking, residential, retail/commercial, etc.
  - Approximate number of units
  - Projected number of floors
  - Type of construction
  - Anticipated amenities
  - Current site use
  - Projected project timeline
- Information regarding land purchase as well as any existing land loan
- Current site zoning information and necessary adjustments and variances to execute Acceptable Project as conceived
- Project budget that distinguishes between what is required for land acquisition/pre-development versus the acceptable Project construction phase(s)
- Sources and uses of capital as well as projected profits
- Market overview

- Comparable sales or rental information regarding all that apply: residential, parking, retail/commercial, etc.
- Description of any known product in the pipeline
- Such other materials as may be reasonably requested by the Lender based upon a review of the materials submitted in accordance with the foregoing list

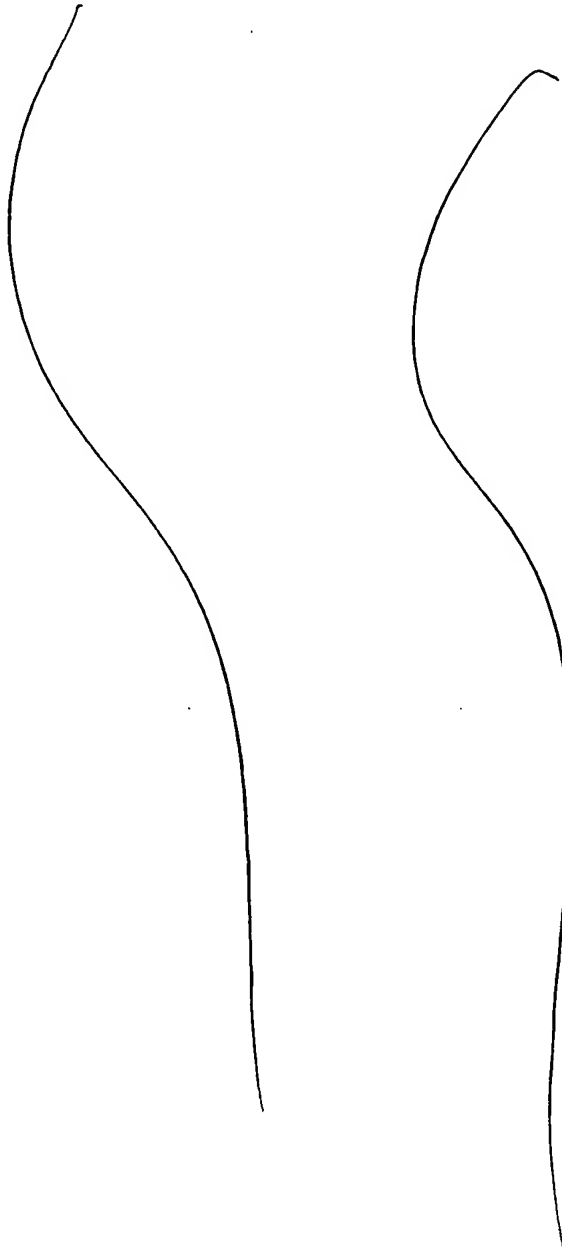


EXHIBIT D – LEASES

None.

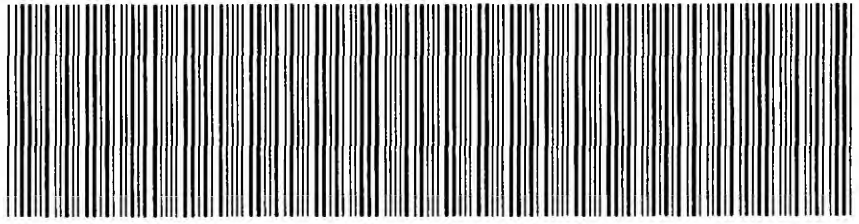
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☐ The Security Instrument covers real property improved, or to be improved, by a one or two family dwelling only.

☐ This Security Instrument covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, more than six residential dwelling units with each dwelling unit having its own separate cooking facilities.

☒ This Security Instrument does not cover real property improved as described above.

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**



**2016050901390005001S19C2**

**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID: 2016050901390005**

**Document Date: 05-05-2016**

**Preparation Date: 05-10-2016**

**Document Type: MORTGAGE**

**SUPPORTING DOCUMENTS SUBMITTED:**

**Page Count**

253 MORTGAGE TAX EXEMT AFFIDAVIT

**3**

**AFFIDAVIT PURSUANT TO ART. XI, SEC. 577(2)  
OF THE  
PRIVATE HOUSING FINANCE LAW**

STATE OF NEW YORK     )  
  ) s.s.  
COUNTY OF NEW YORK    )

Jeffrey Dunston, being duly sworn, deposes and says:

1. I am the President of Peninsula Rockaway Housing Development Fund Corp. ("Mortgagor").

2. Mortgagor was duly organized pursuant to the provisions of Article XI of the Private Housing Finance Law of the State of New York as a housing company for the exclusive purpose of developing housing on a non-profit basis for persons and families of limited income.

3. Mortgagor is sponsoring the financing of a housing development project pursuant to the provisions of Article XI of the Private Housing Finance Law of the State of New York. To secure financing for the project, Mortgagor shall give the mortgage (the "Mortgage") in the amount of \$14,200,000.00 to Wells Fargo Bank, N.A. The Mortgage is secured by the premises described in Exhibit A attached thereto and made a part hereof.

4. Section 577(2) of Article XI of the Private Housing Finance Law provides that mortgages of a housing development fund company are exempt from mortgage recording taxes imposed by Article XI of the Tax Law of the State of New York.

WHEREFORE, your deponent respectfully requests that the above mortgages be declared exempt from taxation pursuant to the provisions of Section 577(2) of Article XI of the Private Housing Finance Law.

By: \_\_\_\_\_

Jeffrey Dunston, President

Sworn to before me  
this 3 day of July, 2016

\_\_\_\_\_  
Notary Public

**JAMES J. HUNTER**  
Notary Public, State of New York  
No. 01HU5005744  
Qualified in Nassau County  
Commission Expires December 14, 2018

**SEAL**



EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to Land Acquisition Loan Mortgage, Assignment of Leases and Rents and Security Agreement between Peninsula Rockaway Limited Partnership, a New York limited partnership, as Borrower, and Peninsula Rockaway Housing Development Fund Corp., as Nominee, (collectively, the "**Mortgagor**") and Wells Fargo Bank, N.A., a national banking association as "Lender", dated as of May 5, 2016.

All that certain real property located in Queens County, State of New York, described as follows:

The land referred to in this Certificate of Title is described as follows:

BLOCK: 15842 LOT: 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Rockaway Beach Boulevard, with the westerly side of Beach 50th Street;

RUNNING THENCE northerly along the westerly side of Beach 50th Street, 276.83 feet;

THENCE westerly at right angles to said Beach 50th Street, 260.00 feet;

THENCE southerly at right angles to the last mentioned course, 292.98 feet to the northerly side of Rockaway Beach Boulevard;

THENCE easterly along the northerly side of Rockaway Beach Boulevard, 16.61 feet;

THENCE continuing easterly, along the northerly side of Rockaway Beach Boulevard, 243.93 feet to the corner first above mentioned, at the point or place of BEGINNING.

BLOCK: 15843 LOT: 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Beach Channel Drive, with the easterly side of Beach 53rd Street;

RUNNING THENCE easterly along the southerly side of Beach Channel Drive, 430.06 feet;

THENCE southerly along a line forming an interior angle of 89 degrees 05 minutes 53 seconds with the southerly side of Beach Channel Drive, 713.87 feet to the northerly side of Rockaway Beach Boulevard;

Acquisition Land Loan Mortgage, Assignment of Leases and Rents and Security Agreement  
Peninsula Land Loan

THENCE westerly along the northerly side of Rockaway Beach Boulevard, 223.38 feet actual (223.42 feet deed) to an angle point;

THENCE southwesterly along the northerly side of Rockaway Beach Boulevard, 162.34 feet;

THENCE still southwesterly along the northerly side of Rockaway Beach Boulevard, 56.49 feet to the corner formed by the intersection of the northwesterly side of Rockaway Beach Boulevard, with the easterly side of Beach 53rd Street;

THENCE northerly along the easterly side of Beach 53rd Street, 794.23 feet to the corner first above mentioned, at the point or place of BEGINNING.